



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

Public Copy

FILE: [REDACTED]

Office: Nebraska Service Center

Date: JUN 13 2000

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Temporary Protected Status under § 244 of the Immigration and Nationality Act, 8 U.S.C. 1254a

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

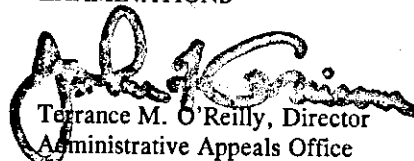
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of Honduras who indicated on his application that he arrived in the United States on November 20, 1997. The director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to establish he had entered prior to December 30, 1998 and had been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant submitted a copy of a Michigan registration certificate dated September 4, 1998 for a 1986 Toyota Pickup containing his name and address at [REDACTED]. He also submitted one copy of a rental receipt dated September 30, 1999 reflecting a rental payment of \$375 for an apartment at [REDACTED].

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since January 5, 1999;
- c. Has continuously resided in the United States since December 30, 1998;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 240.4; and
- f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 5, 1999 and July 5, 2000.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b).

The applicant's documentation submitted on appeal supports other documentation in the record such as an August 1998 rent receipt, an October 1998 telegraphic transfer of money, his Michigan identification card with an illegible issue date and a January 1999 rent receipt. In general, the documentation supports the applicant's assertions that he was present in the United States prior to December 30, 1998 and continuously physically present since January 5, 1999. Consequently, the director's decision to deny the application for temporary protected status will be withdrawn and the application will be approved.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of § 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained. The director's decision is withdrawn and the application is approved.